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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO
BY *Anna Logan* December 27, 2019
ANALYST

8
9 **BEFORE THE**
PODIATRIC MEDICAL BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 500-2019-000908

13 **AMOL SAXENA, D.P.M.**
14 795 El Camino Real
Dept. of Sports Medicine
15 Palo Alto, CA 94301-2302

ACCUSATION

16 **Podiatrist License No. E3588**

17 Respondent.

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19 **PARTIES**

20 1. Brian Naslund (Complainant) brings this Accusation solely in his official capacity as
21 the Executive Officer of the Podiatric Medical Board, Department of Consumer Affairs.

22 2. On July 1, 1989, the Podiatric Medical Board issued Podiatrist License Number E
23 3588 to Amol Saxena, D.P.M. (Respondent). The Podiatrist License was in full force and effect
24 at all times relevant to the charges brought herein and will expire on June 30, 2021, unless
25 renewed.

26 **JURISDICTION**
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1 3. This Accusation is brought before the Podiatric Medical Board (Board), Department
2 of Consumer Affairs, under the authority of the following laws. All section references are to the
3 Business and Professions Code (Code) unless otherwise indicated.

4 4. Section 2222 of the Code states:

5 The California Board of Podiatric Medicine shall enforce and administer this
6 article as to doctors of podiatric medicine. Any acts of unprofessional conduct or
7 other violations proscribed by this chapter are applicable to licensed doctors of
8 podiatric medicine and wherever the Medical Quality Hearing Panel established
9 under Section 11371 of the Government Code is vested with the authority to enforce
10 and carry out this chapter as to licensed physicians and surgeons, the Medical Quality
11 Hearing Panel also possesses that same authority as to licensed doctors of podiatric
12 medicine.

13 The California Board of Podiatric Medicine may order the denial of an
14 application or issue a certificate subject to conditions as set forth in Section 2221, or
15 order the revocation, suspension, or other restriction of, or the modification of that
16 penalty, and the reinstatement of any certificate of a doctor of podiatric medicine
17 within its authority as granted by this chapter and in conjunction with the
18 administrative hearing procedures established pursuant to Sections 11371, 11372,
19 11373, and 11529 of the Government Code. For these purposes, the California Board
20 of Podiatric Medicine shall exercise the powers granted and be governed by the
21 procedures set forth in this chapter.

22 5. Section 2228.5 of the Code states:

23 (a) On and after July 1, 2019, except as otherwise provided in subdivision (c),
24 the board shall require a licensee to provide a separate disclosure that includes the
25 licensee's probation status, the length of the probation, the probation end date, all
26 practice restrictions placed on the licensee by the board, the board's telephone
27 number, and an explanation of how the patient can find further information on the
28 licensee's probation on the licensee's profile page on the board's online license
information Internet Web site, to a patient or the patient's guardian or health care
surrogate before the patient's first visit following the probationary order while the
licensee is on probation pursuant to a probationary order made on and after July 1,
2019.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall
obtain from the patient, or the patient's guardian or health care surrogate, a separate,
signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to
subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the
disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a
guardian or health care surrogate is unavailable to comprehend the disclosure and
sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit
is unscheduled, including consultations in inpatient facilities.

1 (3) The licensee who will be treating the patient during the visit is not known to
2 the patient until immediately prior to the start of the visit.

3 (4) The licensee does not have a direct treatment relationship with the patient.

4 (d) On and after July 1, 2019, the board shall provide the following
5 information, with respect to licensees on probation and licensees practicing under
6 probationary licenses, in plain view on the licensee's profile page on the board's
7 online license information Internet Web site.

8 (1) For probation imposed pursuant to a stipulated settlement, the causes
9 alleged in the operative accusation along with a designation identifying those causes
10 by which the licensee has expressly admitted guilt and a statement that acceptance of
11 the settlement is not an admission of guilt.

12 (2) For probation imposed by an adjudicated decision of the board, the causes
13 for probation stated in the final probationary order.

14 (3) For a licensee granted a probationary license, the causes by which the
15 probationary license was imposed.

16 (4) The length of the probation and end date.

17 (5) All practice restrictions placed on the license by the board.

18 (e) Section 2314 shall not apply to this section.

19 (f) For purposes of this section:

20 (1) "Board" means the California Board of Podiatric Medicine.

21 (2) "Licensee" means a person licensed by the California Board of Podiatric
22 Medicine.

23 6. Section 2497 of the Code states:

24 (a) The board may order the denial of an application for, or the suspension of,
25 or the revocation of, or the imposition of probationary conditions upon, a certificate
26 to practice podiatric medicine for any of the causes set forth in Article 12
27 (commencing with Section 2220) in accordance with Section 2222.

28 (b) The board may hear all matters, including but not limited to, any contested
case or may assign any such matters to an administrative law judge. The proceedings
shall be held in accordance with Section 2230. If a contested case is heard by the
board itself, the administrative law judge who presided at the hearing shall be present
during the board's consideration of the case and shall assist and advise the board.

7. Section 2234 states in relevant part:

The board shall take action against any licensee who is charged with
unprofessional conduct. In addition to other provisions of this article, unprofessional
conduct includes, but is not limited to, the following:

" . . . "

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

“ ”

COST RECOVERY

8. Section 2497.5 of the Code states:

(a) The board may request the administrative law judge, under his or her proposed decision in resolution of a disciplinary proceeding before the board, to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not be increased by the board unless the board does not adopt a proposed decision and in making its own decision finds grounds for increasing the costs to be assessed, not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

(c) When the payment directed in the board's order for payment of costs is not made by the licensee, the board may enforce the order for payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within one year period for those unpaid costs.

(f) All costs recovered under this section shall be deposited in the Board of Podiatric Medicine Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct.

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FACTUAL ALLEGATIONS

9. Respondent first saw Patient P-1,¹ a 24-year-old man, on February 21, 2014. P-1 had injured his left foot while snowboarding the day before. His foot was swollen and the left calcaneal area (heel bone) was quite painful. X-rays and a CT scan reflected a calcaneal comminuted fracture with extension to the posterior facet of the subtalar joint² with a depression.

10. Respondent discussed treatment options with P-1 and his father. They made plans for an open reduction, internal fixation (ORIF) surgery with possible allograft bone graft.

11. Respondent performed the ORIF surgery on P-1 on February 24, 2014. The preoperative and postoperative diagnosis was left foot calcaneus fracture. Respondent performed an ORIF left calcaneus medial tuberosity and placed an allograft iliac crest wedge to help reduce the posterior facet. Respondent documented in his operative note that imaging showed excellent restoration of the posterior facet and well placed screw and a locking plate. He documented good reduction and alignment.

12. P-1 returned for a post-surgery follow-up on March 17, 2014 and Respondent removed the sutures and cast. His next follow-up was on April 7, 2014. X-rays were taken and Respondent noted that the x-rays showed some interval consolidation with good joint space in non-weight bearing views. Respondent's chart notes state that P-1's surgical site looked good, his pain seemed to be under control, and Respondent advised P-1 that he could begin limited weight bearing and start physical therapy in two weeks.

13. Respondent's next visit with P-1 was on May 19, 2014. Respondent noted that P-1's "good heel height x-rays show what the fracture is healed with some significant posterior hypertrophy, though the compression portion of fracture does not appear to be collapsed and he has good heel height and Bohler's angle." He noted "hypertrophic bone/pump bump" and

¹ The patient is designated in this document as Patient P-1 to protect his privacy. Respondent knows the name of the patient and can confirm his identity through discovery.

² The subtalar joint is a compound joint positioned directly below the ankle joint and is vital to the movement of the foot and ankle.

1 advised P-1 that he might be a candidate in the future for hardware removal if symptomatic and
2 resection of the pump bump.³

3 14. P-1's final visit with Respondent was on July 10, 2014. On that visit, P-1 complained
4 of stiffness and pain in the peroneal tendons. Respondent noted that his subtalar joint range of
5 motion was decreased because the plate was slightly prominent and that he had some prominence
6 of the posterior heel. Respondent advised P-1 that he might need hardware removal and possibly
7 retrocalcaneal exostectomy when he returns from his overseas fellowship but until then, to
8 concentrate on strengthening.

9 15. P-1 sought a second opinion and had a CT scan done of his left foot on July 25, 2014,
10 shortly before leaving the country. Respondent sent a letter to P-1 on July 31, 2014 evaluating
11 the CT scan and terminating his physician/patient relationship with P-1. Respondent said that the
12 findings on the scan "are as good as they could possibly be, where the report shows the subtalar
13 joint appears preserved, alignment appears stable and nearly anatomic. There is no loosening of
14 the hardware and it is well-seated. This is essentially as good as you can expect from the injury
15 you sustained." Respondent noted that the results did not change his prognosis or treatment plan.
16 He told P-1 that he did not feel comfortable continuing to treat him and recommended that when
17 he returned from abroad, he seek care from a different provider.

18 16. The x-rays taken of P-1's left foot during surgery and the post-surgery x-rays and CT
19 scans of his foot reflect that Respondent's surgical alignment of the joint was improper and
20 resulted in a less than ideal fixation and correction of the fracture. Despite the mal-alignment, he
21 advised P-1 that the alignment was good and did not recommend to P-1 that he have a subsequent
22 surgery to repair the initial improper alignment.

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28 ³ A "pump bump" is a term for Haglund's deformity, which is a bony enlargement on the
back of the heel.

1 CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct (gross negligence and/or repeated negligent acts))

3 17. Respondent is guilty of unprofessional conduct and subject to disciplinary action
4 under section 2234, subdivision (b) and/or (c), in that he was grossly negligent and/or committed
5 repeated negligent acts, including but not limited to the following:

6 A. During his surgery to repair P-1's comminuted intra-articular calcaneal fracture,
7 Respondent failed to adequately approximate the bone ends and did not recognize the
8 misalignment on the images taken during surgery and did not make adjustments to line the bones
9 up properly.

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12 B. Respondent failed to identify on post-surgery x-rays and CT scans that P-1's
13 fractured joint was mal-aligned and failed to recommend a subsequent surgery to P-1 to repair the
14 misalignment.

15 PRAYER

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Podiatric Medical Board issue a decision:

18 1. Revoking or suspending Podiatrist License Number E 3588, issued to Amol Saxena,
19 D.P.M.;

20 2. Ordering Amol Saxena, D.P.M., if placed on probation, to disclose the disciplinary
21 order to patients pursuant to section 2228.5 of the Code;

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1 3. Ordering Amol Saxena, D.P.M. to pay the Podiatric Medical Board the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 2497.5; and,

4 4. Taking such other and further action as deemed necessary and proper.
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7 DATED: December 27, 2019



BRIAN NASLUND
Executive Officer
Podiatric Medical Board
Department of Consumer Affairs
State of California
Complainant

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